

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

EARL INGELS,

Petitioner, : Case No. 1:21-cv-561

- vs -

District Judge Matthew W. McFarland
Magistrate Judge Michael R. Merz

WARDEN, North Central
Correctional Institution,

:
Respondent.

ORDER TO THE CLERK

This habeas corpus case is before the Court on Petitioner’s “Motion for Relief for [sic] Judgment Pursuant to Div. R. 59(e) and 60(b)(6)” (Doc. No. 57). The document is captioned in the United States Court of Appeals and was apparently received by the Clerk of that Court on April 1, 2024, and then forwarded to this Court where it was filed April 4, 2024.

District Judge McFarland dismissed this case on December 29, 2022 (ECF No. 41). Petitioner filed a Notice of Appeal on January 31, 2023 (ECF No. 46) and a Motion for Certificate of Appealability on the same date (ECF No. 45). Judge McFarland had denied a certificate of appealability in the final judgment as is required by Rule 11 of the Rules Governing § 2254 Proceedings, so Petitioner’s new motion essentially amounted to a motion for reconsideration and was denied as moot.

Apparently Petitioner also sought a certificate of appealability from the Sixth Circuit because our docket contains a copy of an Order from that Court denying a certificate filed June

27, 2023 (ECF No. 49). Two months later Petitioner filed a document in this Court asking us to reconsider the denial of a certificate of appealability (ECF No. 51). The undersigned recommended denial because this Court lacks jurisdiction to consider a late motion to amend a judgment under Fed.R.Civ.P. 59(e)(Report, ECF No. 52). Petitioner, although properly notified of his opportunity to do so, filed no objections and Judge McFarland denied the motion on the recommended basis on September 29, 2023 (ECF No. 53).

On October 3, 2023, Petitioner moved to transfer his Motion for Reconsideration of Denial of a Certificate of Appealability from this Court to the Sixth Circuit, claiming that Motion had been filed in this Court due to “inadvertent clerical error.” (ECF No. 55). The Court denied that motion and noted that Petitioner’s time to seek reconsideration from the Sixth Circuit had likely expired (ECF No. 56, PageID 2002). Now, four months later, Petitioner asks for amendment of the decision of the Sixth Circuit denying his request for reconsideration as untimely.

Why the Sixth Circuit Clerk believed the Motion was directed to this Court is unclear; it may be because it sought relief under Fed.R.Civ.P. 59(e) and 60(b)(6). However, this Court has no authority under any rule to modify a decision of the Sixth Circuit. Accordingly, the Clerk is ORDERED to return ECF No. 57 to the Clerk of the Sixth Circuit with a copy of this Order.

April 8, 2024.

s/ Michael R. Merz
United States Magistrate Judge